

EXHIBIT P

Volume I
Pages 1 to 315
Exhibits 1 to 28

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - -x
WILLIAM M. BYRD, :
Plaintiff, :
vs. : Civil Action
: No. 04-11032-DP
AVENTIS PHARMACEUTICALS, :
INC., and DEBRA EDMUNDS, :
Defendants. :
- - - - -x

DEPOSITION OF WILLIAM M. BYRD, a witness
called on behalf of the Defendants, taken pursuant
to the Federal Rules of Civil Procedure, before
Ken A. DiFraia, Registered Professional Reporter and
Notary Public in and for the Commonwealth of
Massachusetts, at the Offices of Jackson Lewis LLP,
75 Park Plaza, Boston, Massachusetts, on Monday,
October 18, 2004, commencing at 10:05 a.m.

PRESENT:

Flavin & Koslowsky
(by John C. Koslowsky, Esq.)
424 Adams Street, Milton, MA 02186,
for the Plaintiff.

Jackson Lewis LLP
(by Joan Ackerstein, Esq.,
and Samia Kirmani, Esq.)
75 Park Plaza, Boston, MA 02116,
for the Defendants.

* * * * *

1 A. Uh-huh.

2 Q. You are going to have to answer with a yes
3 or no.

4 A. Yes.

5 Q. A couple of things are difficult for
6 witnesses. One is what you just did. You have to
7 answer with a response.

8 The other is even though you know what my
9 question is, you need to allow me to finish the
10 question and then answer, so that our court reporter
11 can take down both the full question and the full
12 answer.

13 A. Okay.

14 Q. You understand that you have sworn to tell
15 the truth today?

16 A. Yes.

17 Q. You understand that testifying here today
18 is like testifying in a courtroom?

19 A. Yes.

20 Q. You understand that if you are not telling
21 the truth today, that that's going to amount to
22 perjury?

23 A. Yes.

24 Q. I assume that you are planning to tell us

1 the truth today?

2 A. Of course.

3 Q. Thank you. If at any time you don't
4 understand a question that I've asked you, will you
5 let me know that.

6 A. Yes, I will.

7 Q. If I ask you a question and you answer it,
8 I'm going to assume that you did understand it,
9 okay?

10 A. Okay.

11 Q. If you need a break at any point, will you
12 let us know that.

13 A. Yes, I will.

14 Q. Can you give me your residential address,
15 please.

16 A. 38 Meadowview Road, Milton, Mass. 02186.

17 Q. How long have you lived at that address?

18 A. Approximately 16 years.

19 Q. Are you married?

20 A. Yes.

21 Q. What is your wife's name?

22 A. Gladys.

23 Q. Last name Byrd?

24 A. Her last name?

1 A. Oh, geez...

2 Q. Local?

3 A. Yes.

4 Q. In Boston?

5 A. Yes.

6 Q. What position did you get?

7 A. WIC specialist.

8 Q. What is a WIC specialist?

9 A. They called on the I guess you could call
10 it government programs for Women Infant and
11 Children.

12 Q. What did Ross Labs do?

13 A. Sold infant formula.

14 Q. Were you basically a sales rep of infant
15 formula?

16 A. Yes.

17 Q. How long did you do that for?

18 A. Ten years.

19 Q. Where did you do that?

20 A. Right here in the Boston North Shore area.
21 Excuse me, I was also promoted during that time, so
22 I was not just a WIC specialist for ten years.

23 Q. Who did you report to as a WIC specialist?

24 A. John Bosie.

1 Q. How is the last name spelled?

2 A. B-o-s-i-e, I believe.

3 Q. What was his position?

4 A. He was the district manager.

5 Q. Did you have a territory?

6 A. Yes.

7 Q. What territory was that?

8 A. Boston and the North Shore.

9 Q. Are you telling us then at some point, you
10 got a promotion?

11 A. I was promoted to a territory manager, yes.
12 Let me back up. I was the local WIC specialist,
13 then promoted to the state WIC specialist, then to a
14 territory.

15 Q. About how long were you working before you
16 became a territory manager?

17 A. I think two years.

18 Q. After you became a territory manager, were
19 you supervising people?

20 A. No.

21 Q. What did you do as a territory manager?

22 A. Managed the territory. I called on
23 hospitals, doctors.

24 Q. Still selling infant formula?

1 becoming a district manager?

2 A. No.

3 Q. Did you ever apply for a promotion?

4 A. No.

5 Q. Did you have any performance issues at Ross
6 Labs?

7 A. No.

8 Q. When you were selling Foster Grants in the
9 New England region, were you aware of who some of
10 the other retail and wholesale salespersons were?

11 A. No. That was the only one, in retail.

12 Q. You were supervising some retail --

13 A. That was as a district manager, as a
14 wholesale.

15 Q. As a district manager, were you aware of
16 who some of the other sales reps were?

17 A. Yes.

18 Q. Are you African-American?

19 A. Yes.

20 Q. Were there other sales reps at Foster Grant
21 who were African-American?

22 A. No.

23 Q. You were the only one that you knew of?

24 A. Yes.

1 Q. Did you feel that you were treated
2 differently in any way at Foster Grant due to your
3 race?

4 A. No.

5 Q. How about at Ross Labs, did you know any
6 other African-American sales representatives?

7 A. One.

8 Q. The other sales reps that you knew were
9 white?

10 A. Yes.

11 Q. Did you feel that you were treated any
12 differently at Ross Labs because there was only one
13 other African-American salesperson there?

14 A. No.

15 Q. You did not collect unemployment after you
16 left Ross Labs?

17 A. Not that I recall.

18 Q. How much time elapsed between your leaving
19 Ross Labs and your going to Dictaphone?

20 A. Maybe a month or two. I'm not sure.

21 Q. If you had the job already at Dictaphone
22 when you left Ross Labs, why would you take a month
23 or two off?

24 A. I have no idea.

1 Q. As a hospital specialist at Dictaphone, did
2 you have a territory?

3 A. Yes.

4 Q. What territory was that?

5 A. Boston.

6 Q. You were calling on hospitals?

7 A. Yes.

8 Q. Were you also calling on physicians?

9 A. No. Well, I take that back. If you
10 consider a radiologist a physician, then yes, I was.

11 Q. Don't you consider a radiologist a
12 physician?

13 A. Yes, I guess so.

14 Q. You called on hospitals and radiologists?

15 A. Radiology departments and pathology
16 departments and emergency rooms.

17 Q. You called on hospitals, and within the
18 hospital, you would call on radiology, pathology,
19 emergency room departments?

20 A. Yes.

21 Q. Who did you report to?

22 A. Barry Jones.

23 Q. What was his title?

24 A. District manager.

1 Q. How long did you work as a sales rep at
2 Dictaphone?

3 A. I think three to four years.

4 Q. Did you get any promotions?

5 A. No.

6 Q. Was Barry Jones your district manager the
7 whole time?

8 A. Yes.

9 Q. Are you aware of any other African-American
10 salespeople at Dictaphone?

11 A. No.

12 Q. Did you feel that you were treated any
13 differently due to your race there?

14 A. No.

15 Q. Did you have any performance issues at
16 Dictaphone?

17 A. No.

18 Q. Why did you leave Dictaphone?

19 A. They went out of business.

20 Q. So what happened?

21 A. What happened where?

22 Q. When they went out of business.

23 A. What happened to whom, the business or me?

24 Q. You.

1 A. I went to work for --

2 Q. Well, I mean, how did you know that they
3 were going out of business?

4 A. We were told.

5 Q. You all were told at once?

6 A. No, individually.

7 Q. Who told you?

8 A. I think it was Barry Jones.

9 Q. Barry Jones met with you and told you
10 Dictaphone was going out of business?

11 A. Yes.

12 Q. Did they pay you severance?

13 A. I believe so.

14 Q. How long a severance period did you get?

15 A. I don't know.

16 Q. Where did you work after Dictaphone?

17 A. Universal Hospital Services.

18 Q. Located where?

19 A. They are not located anyplace anymore.
20 They went out of business.

21 Q. Where were they located?

22 A. Burlington, Massachusetts.

23 Q. Where was Dictaphone located?

24 A. Burlington, Mass.

1 Q. Did other people get let go at the same
2 time you did?

3 A. I was not let go. People started leaving
4 the company at different times, yes.

5 Q. I'm sorry, but I thought you told us that
6 they were going out of business at Dictaphone.

7 A. Uh-huh.

8 Q. Did you quit?

9 A. Yes.

10 Q. You quit Dictaphone --

11 A. Yes.

12 Q. -- because they were going out of business?

13 A. Right.

14 Q. It was a voluntary choice on your part?

15 A. Yes.

16 Q. I guess I'm confused. I thought you told
17 me you met with Barry Jones, that Barry Jones told
18 you that they were going out of business.

19 A. Right.

20 Q. And that you believe you got some
21 severance?

22 A. I believe I got what was coming to me,
23 bonus checks.

24 Q. Barry Jones told you that the company was

1 going out of business, and you said, "I quit"?

2 A. It was not that quick, no.

3 Q. Well, what was it?

4 A. He had said that they were going out of
5 business and that basically we all should look for
6 another position with another company. He gave us
7 an opportunity to look for other work.

8 I believe he left before everyone else
9 left.

10 Q. How long did you work there after he told
11 you that they were going out of business?

12 A. I can't recall. It could have been a
13 month, six weeks. I don't know.

14 Q. About when did you leave Universal Hospital
15 Services? What time was that?

16 A. 1997.

17 Q. Is it your testimony that from the time you
18 started at Foster Grant until the time you leave
19 Universal Hospital Services in 1997, you never had
20 performance issues at any of those employers that
21 you told us about?

22 A. True.

23 Q. Were you ever put on a performance
24 improvement plan at any of those employers?

1 A. No.

2 Q. You never encountered any form of race
3 discrimination at any of those --

4 A. None that I could determine.

5 Q. There was never a period of time when you
6 were out of work for a long period of time? You
7 were always able to get another job?

8 A. Yes.

9 Q. Your testimony is that Foster Grant went
10 out of business, Dictaphone was going to go out of
11 business, and Universal Hospital Services were going
12 out of business?

13 A. Yes.

14 Q. At none of these jobs, Foster Grant, Ross
15 Labs, Dictaphone, Universal Hospital Services, at
16 none of them were you selling prescription
17 medications?

18 A. Let's see here... I think at Ross
19 Laboratories we sold Rondec, which could have been
20 prescription. I'm not sure.

21 Q. What's that?

22 A. An antihistamine, liquid.

23 Q. I thought you were selling infant formulas?

24 A. Yes. That was one product, the main

1 Q. Would you agree with me that when you
2 worked as a sale rep at Aventis, you were on
3 something of an honor system?

4 A. Yes.

5 Q. You had to do reports of your activity
6 during the day?

7 A. Yes.

8 Q. Your manager had you on an honor system,
9 understanding that you would do your best to tell
10 the truth?

11 A. Yes.

12 Q. Did you interpret policy at Aventis the way
13 you just interpreted my question?

14 A. No.

15 Q. You didn't want to tell me about that
16 part-time job, did you?

17 A. Part-time job doesn't pay me. There are no
18 1099's.

19 Q. The question is you did not want to tell me
20 about that part-time job, did you?

21 A. That's not true. You asked what I did for
22 a living. What I do for a living is I drive a
23 limousine. That's what pays me.

24 Q. I said to you do you currently have any

1 employment and have you had any employment since you
2 left Aventis other than this, and you said, "No."

3 A. I said no, right.

4 Q. You got commissions from this part-time
5 job, have you not?

6 A. \$110.

7 Q. Mr. Byrd, you took an oath today to tell
8 the truth, the whole truth and --

9 MR. KOSLOWSKY: I would object to this.
10 You are badgering him at this point. Can you ask a
11 question.

12 Q. Will you assure me you will tell the truth?

13 A. I have already done that.

14 Q. Who are you working for on a part-time
15 basis?

16 A. It's called "Mapleleaf-RX."

17 Q. What is Mapleleaf-RX?

18 A. It's a company that provides the service to
19 import drugs from Canada.

20 Q. How did you become acquainted with
21 Mapleleaf-RX?

22 A. I was recommended by a doctor.

23 Q. Who was that?

24 A. Dr. Ronald Bogusky.

1 Q. Where's he located?

2 A. Dartmouth, Mass.

3 Q. When did he recommend you?

4 A. 16 months ago maybe.

5 Q. That would be approximately July of 2003?

6 A. Could be.

7 Q. Well, was it?

8 A. I don't know the time or the date.

9 Q. Did Dr. Bogusky talk to you about
10 Mapleleaf-RX?

11 A. No.

12 Q. Did somebody contact you?

13 A. Yes.

14 Q. Who was that?

15 A. John Chacago.

16 Q. How is the last name spelled?

17 A. C-h-a-c-a-g-o. It's almost like Chicago.

18 Q. What is his position?

19 A. He's the owner.

20 Q. Where's he located?

21 A. Randolph, Mass.

22 Q. What is it that his business does?

23 A. Imports drugs from Canada.

24 Q. Where's the business located?

1 A. Randolph, Mass.

2 Q. Is there actually a facility in Randolph?

3 A. No.

4 Q. He operates from his home?

5 A. Yes.

6 Q. Are there any other independent contractors
7 other than you?

8 A. Not that I know of. There may be.

9 Q. Is there anybody else in the business other
10 than John Chacago and you?

11 A. His wife.

12 Q. You've been working with him for the past
13 16 months?

14 A. He approached me 16 months ago. I started
15 probably in January of 2003.

16 Q. January of 2003 is more than 16 months ago.

17 A. If you say so.

18 Q. I'm just asking you. You started in
19 January 2003?

20 A. Yes, I believe so.

21 Q. Do you have some kind of written agreement
22 with him?

23 A. No.

24 Q. What is it that your job is?

1 A. Call on physicians to offer our services
2 for their patients to save money by importing drugs
3 from Canada.

4 Q. Do you have any ownership interest in the
5 business?

6 A. No.

7 Q. You do actually call on physicians, don't
8 you?

9 A. Yes.

10 Q. About how many days a week do you call on
11 physicians?

12 A. That varies. Again, it depends on what I
13 do with the limousine company. I try and get in
14 maybe a day and a half during the week.

15 Q. What physicians do you call on?

16 A. All.

17 Q. You call on the physicians you used to call
18 on for Aventis, don't you?

19 A. Yes, and others.

20 Q. Are there particular drugs that you are
21 trying to sell?

22 A. No.

23 Q. Is this generic drugs?

24 A. This is a service. We don't sell drugs.

1 Q. What is it that you are selling?

2 A. A service.

3 Q. How does the service work, Mr. Byrd?

4 A. It works voluntarily for the patient if
5 they want to save money by importing drugs from
6 Canada.

7 Q. What is it that you are selling to the
8 physician?

9 A. A service.

10 Q. Could you be more descriptive.

11 A. That's what it is.

12 Q. You meet with the physician and say what?

13 A. "We have a service that you can offer your
14 patients if they are having financial difficulties
15 if they need to import drugs from Canada." We give
16 them a form that the patient can fill out if they
17 choose to fill it out if they choose the service.
18 That's what it is.

19 Q. You have literature that relates to the
20 services that Mapleleaf provides?

21 A. Yes.

22 Q. Because you hand literature to physicians,
23 right?

24 A. Yes.

1 Q. Do you know how many customers have
2 subscribed with Mapleleaf?

3 A. No.

4 Q. Do you know if there are any that do?

5 A. Excuse me?

6 Q. Are there any that have subscribed?

7 A. Yes.

8 Q. How do you get paid?

9 A. By those who subscribe.

10 Q. What is the total that you have received
11 thus far?

12 A. Oh, I think maybe \$1,000.

13 Q. You've been doing this since January 2003,
14 calling on physicians a day or day and a half, and
15 you have gotten \$1,000?

16 A. Yes.

17 Q. Does Mr. Chacago -- am I saying his name
18 right?

19 A. "Chacago."

20 Q. Does he know that you were formerly
21 employed by Aventis?

22 A. Yes.

23 Q. What did you tell him about the reason your
24 employment ended?

1 Q. The date is 3/8/04, do you see that?

2 A. Uh-huh.

3 Q. Does that mean you signed the tax return on
4 or about March 8, 2004?

5 A. Yes.

6 Q. You indicate your occupation is sales, do
7 you see that?

8 A. Yes.

9 Q. What sales were you doing that you were
10 calling your occupation?

11 A. That probably is what I have done all my
12 working career, sales. That's what I would consider
13 myself, as a salesman.

14 Q. Where it says, "Under the penalties of
15 perjury, I declare I've examined this return and
16 accompanying schedules and statements, and to the
17 best of my knowledge and belief, they are true,
18 correct and complete," you understood that you were
19 telling the truth when you said your occupation was
20 sales?

21 A. Yes.

22 Q. There is a form here for profit or loss
23 from a business sole proprietorship. It says the
24 name of the proprietor is William M. Byrd. What

1 business is this that is reflected on this form?

2 A. Well, I believe it's what I called "Byrd
3 Enterprises."

4 Q. What is Byrd Enterprises?

5 A. It's nothing. Let's see here... I spent
6 some money buying Herbalife products. I was going
7 to try to sell Herbalife.

8 Q. When did you do that?

9 A. Oh, geez, maybe a year ago.

10 Q. What are Herbalife products?

11 A. They are nutritional products, weight loss
12 products.

13 Q. How much did you spend?

14 A. Around \$1,500.

15 Q. Have you sold them anyplace?

16 A. No.

17 Q. You would agree with me in the document
18 marked as Exhibit 1 when we asked for periods of
19 self-employment, you didn't tell us anything about
20 Byrd Enterprises, did you?

21 A. No, I didn't.

22 Q. This tax return was prepared by Norman
23 Clement?

24 A. Uh-huh.

1 Q. Is that yes?

2 A. Yes. I'm sorry.

3 Q. Is he an accountant?

4 A. Yes.

5 Q. On this profit or loss from business, you
6 gave this information to Mr. Clement, which he
7 filled out?

8 A. Yes.

9 Q. With all due respect, isn't this a fraud on
10 the Internal Revenue Service?

11 A. No. How is that a fraud? I couldn't sell
12 the Herbalife. I tried. I don't understand what
13 you are calling "a fraud."

14 Q. Do you have a business or don't you?

15 A. No, I don't.

16 Q. Sometime in 2003, you spent \$1,500 for
17 nutritional products, and you could not sell them?

18 A. True. You can come to my home and see it.
19 They are still sitting there.

20 Q. What effort did you make to sell them?

21 A. Phone calls, fliers, meeting people.

22 Q. To whom were you trying to sell these
23 products?

24 A. The general public.

1 Q. Where you list car and truck expenses,
2 \$8,995, what is that?

3 A. I have no idea.

4 Q. When you list the office expense of \$2,234,
5 what is that?

6 A. Computers, fax machines.

7 Q. Are these in your home?

8 A. Yes.

9 Q. You don't have an office anyplace, do you?

10 A. No.

11 Q. Then you deducted or you claimed \$500 in
12 meals and expenses?

13 A. Yes.

14 Q. You actually took in, I take it, \$740?

15 A. Yes, I guess.

16 Q. You told the truth, didn't you? You made
17 \$740?

18 A. Yes...

19 Q. Well, did you or didn't you?

20 A. It says it there, yes.

21 Q. Is that the truth?

22 A. I believe so.

23 Q. So Byrd Enterprises is a business --

24 A. No -- excuse me -- Byrd Enterprises did not

1 make any money.

2 Q. Byrd Enterprises was a business that was
3 yours, self-employment. You bought \$1,500 of
4 nutritional supplements, you sold \$740 worth, and
5 you didn't tell us in the interrogatories, did you?

6 A. Excuse me, but I didn't sell any of it,
7 first of all. I believe this money came from
8 Mapleleaf-RX, the commission that I made, okay?
9 Byrd Enterprises is not a business.

10 Q. This is your tax return, Mr. Byrd, so don't
11 let me put words in your mouth. You told me this
12 was the nutritional business. Are you now changing
13 your testimony?

14 A. No.

15 Q. What business is this from?

16 A. You had asked about the profit and loss
17 from the business. Byrd Enterprises is what I
18 claimed as a business, but it is not a business.
19 What I put down here for income was from Mapleleaf.

20 Q. So what is the car and truck expenses of
21 \$8,885?

22 A. I don't know.

23 Q. What is the \$2,234?

24 A. As I explained, that was a computer and fax

1 machine.

2 Q. Does the computer and fax machine work for
3 Mapleleaf?

4 A. I use the computer for Mapleleaf, yes.
5 Well, let me explain that. There's nothing that I
6 communicate for Mapleleaf to an individual, except
7 for John. I also receive E-mails and faxes for
8 messages over the computer.

9 Q. From John?

10 A. John, yes, and our answering service.

11 Q. Does this page, Profit or Loss From
12 Business 2003, have anything to do with the
13 nutritional supplements?

14 A. No.

15 Q. You are telling me this all relates to
16 Mapleleaf?

17 A. I guess so.

18 Q. Do you have a territory that you call on
19 for Mapleleaf?

20 A. No. I go wherever I want to go.

21 Q. Do you travel overnight?

22 A. No.

23 Q. It's all local traveling?

24 A. Yes.

1 Q. On the next page of this Profit Or Loss
2 From Business, there's a Question No. 44: "Of the
3 total number of miles you drove your vehicle, enter
4 the number of miles you used your vehicle for
5 business," and it says, "24,985."

6 A. Right.

7 Q. What business is that?

8 A. Mapleleaf.

9 Q. You told us that you call on physicians,
10 right?

11 A. Right.

12 Q. A day or day and a half a week?

13 A. Yes.

14 Q. You are going to expect us to believe that
15 you drove 25,000 miles?

16 MR. KOSLOWSKY: Objection.

17 A. You don't have to believe it.

18 MR. KOSLOWSKY: You can ask your questions,
19 but you are getting very accusatory here.

20 MS. ACKERSTEIN: I'm sorry. It's just
21 incredulous.

22 Q. You say you drove 25,000 miles for
23 Mapleleaf?

24 A. Yes.

1 Q. Driving one day a week?

2 A. A day and a half, weekends. If you work
3 out the mileage between Boston and to the Cape and
4 then ride around the Cape, that's over 200 to 300
5 miles a day. You can do the math.

6 Q. Let me press you, because I'm trying to get
7 to the truth, Mr. Byrd.

8 A. Certainly.

9 Q. You told us earlier that you travel a day
10 or day and a half a week for Mapleleaf, was that
11 your testimony?

12 A. That's true.

13 Q. Where does the weekend come in? Are you
14 also traveling on the weekend for Mapleleaf?

15 A. Well, I'm sorry, but probably occasionally
16 I've done that, but not -- what's the word I'm
17 looking for -- not every weekend.

18 Q. Just so I understand it, this 25,000 miles
19 of business travel is all Mapleleaf?

20 A. Yes.

21 Q. Do you get any reimbursement from Mapleleaf
22 for your commuting?

23 A. No.

24 Q. It says, "When did you place your vehicle

1 in service for business purposes," and it says,
2 "May 5, 2003."

3 A. What page are you on?

4 Q. Question No. 43.

5 A. Okay, I see it.

6 Q. You started driving for Mapleleaf --

7 A. Excuse me, this is not me. This is the
8 accountant. I did not answer this question. As a
9 matter of fact, he fills it out for us.

10 For me to say that's when I started or
11 agree with you that is when I started it, it would
12 be a lie.

13 Q. You signed the tax return, didn't you?

14 A. Yes, I did. All I look at when I get the
15 return back is the front page, do we get money back.
16 Then I will sign it and send it off.

17 Q. Are you telling me that --

18 A. I have not reviewed this. I have not
19 reviewed the others either.

20 Q. So you do not review your tax returns
21 before you sign them?

22 A. No.

23 Q. If I wanted to know where the information
24 came from on this business and why Mr. Clement put

1 May 5, 2003 --

2 A. You can ask him.

3 Q. I assume you would not object if I did ask
4 him?

5 A. No, I would not.

6 (Document marked as Byrd

7 Exhibit 3 for identification)

8 Q. Exhibit 3 is a photocopy of your 2002
9 return that was provided to us by your counsel. I
10 see that Mr. Clement did these tax returns as well?

11 A. Yes, he did.

12 Q. I take it you know Mr. Clement?

13 A. I know him? You have to define what you
14 mean by "know." I'm acquainted with him.

15 Q. This tax return bears Mr. Clement's
16 signature, but it does not bear the signature of you
17 or your wife. Can I assume there's an original tax
18 return that you did sign and filed?

19 A. I thought this was it. This is the copy
20 that I was provided with.

21 Q. Look at the profit or loss from business in
22 2002.

23 A. What page are you on? Oh, I have it.

24 Q. This says, "Name of proprietor, William M.

1 the tax return, and Mr. Clement would be the best
2 one to speak to about what is in them?

3 A. If you like, yes.

4 Q. Since you left Aventis, have you had any
5 job interviews?

6 A. Yes.

7 Q. Where have you interviewed?

8 A. Numerous places.

9 Q. Like where?

10 A. You want the names?

11 Q. Do you keep a calendar?

12 A. Calendar?

13 Q. Yes.

14 A. No.

15 Q. You don't have a listing someplace of the
16 places that you interviewed at?

17 A. No, I don't have a list. I have -- I gave
18 him the copies of people I contacted, who I talked
19 with (indicating).

20 Off the top of my head, there was the
21 Westin Hotel.

22 Q. Let me make the question clearer so you
23 know what I'm looking for.

24 A. Go ahead.

1 Q. I'm interesting in knowing about any
2 interviews that you had for a position since you
3 left Aventis.

4 A. Okay.

5 Q. When you tell me the name of an employer, I
6 will ask you some questions, so you tell me in
7 whatever order the interviews that you remember.

8 A. Sure. First Line Screening.

9 Q. Where are they located?

10 A. I don't know.

11 Q. Did you interview with someone?

12 A. Yes.

13 Q. Who was that?

14 A. I don't know.

15 Q. Where did you interview?

16 A. At the hotel over here (indicating). I
17 can't think of the name of the hotel. It could be
18 the Radison or the Tremont Hotel. I don't know.

19 Q. When was this interview?

20 A. Last year.

21 Q. Sometime in 2003?

22 A. Excuse me?

23 Q. Sometime in 2003?

24 A. Yes.

1 Q. What was the position for?

2 A. Sales.

3 Q. What do they sell?

4 A. Service. I believe, if I can remember
5 correctly, they wanted people to call on churches,
6 community centers, to provide some type of screening
7 for osteoporosis, lung cancer, I don't know,
8 something like that.

9 Q. You did not get an offer?

10 A. No.

11 Q. What's the next interview you remember?

12 A. Norvatis.

13 Q. Where did you interview?

14 A. Another hotel on the South Shore -- oh, I
15 take it back. It was at the Marriott Courtyard in
16 Mansfield.

17 Q. Was that also for a sales position?

18 A. Yes.

19 Q. When was the interview?

20 A. Last year.

21 Q. Sometime in 2003?

22 A. Yes.

23 Q. Did you get an offer?

24 A. No.

1 Q. Where else did you interview?

2 A. Geez, Johnson & Johnson.

3 Q. Where was that?

4 A. In my home, telephone interview.

5 Q. I'm talking about in-person interviews
6 right now.

7 A. Let's see here... I believe Lilly. That
8 was at the hotel in Waltham.

9 Q. When was that?

10 A. I think 2001, 2002. I don't know.

11 Q. Sales job?

12 A. Excuse me?

13 Q. A sales job?

14 A. Yes.

15 Q. Did you get an offer?

16 A. No.

17 Q. Your attorney did provide to us documents
18 relating to your job search effort. Would anything
19 relating to these interviews be in those documents?

20 A. Could be. I'm not sure.

21 Q. Did you give your attorney all the
22 documents that relate --

23 A. Yes.

24 Q. You have to let me finish the question.

1 A. Go ahead.

2 Q. Did you give your attorney all the
3 documents that relate to your job search effort?

4 A. I believe so, but I'm not sure.

5 Q. Do you recall any other interviews?

6 A. M-Lynn.

7 Q. What was it?

8 A. M-Lynn.

9 Q. When was that?

10 A. Probably two years ago, or last year. I
11 don't know. They all run in together.

12 Q. No job offer?

13 A. No.

14 Q. Have you had a job offer from anybody?

15 A. No -- oh, I take that back. An insurance
16 company.

17 Q. When was that?

18 A. 2002, I believe.

19 Q. Which insurance company was it?

20 A. Prime America.

21 Q. What kind of position did they offer you?

22 A. Sales.

23 Q. What were you going to be selling?

24 A. Insurance.

1 A. Sean Flanders.

2 Q. Who was an area manager?

3 A. He was a district manager, which now they
4 call it an area manager.

5 Q. Was there a period of time between
6 Mr. Flanders and Deb Edmunds when you didn't have a
7 direct manager?

8 A. There was an interim manager.

9 Q. There was a what?

10 A. Interim manager.

11 Q. Who was that?

12 A. Dave Pearlstein.

13 Q. Is that because Mr. Flanders was reassigned
14 and Ms. Edmunds hadn't yet come?

15 A. Yes.

16 Q. What was that period of time between
17 Mr. Flanders and Ms. Edmunds?

18 A. What do you mean?

19 Q. You said David Pearlstein was the interim
20 manager. How long was that for?

21 A. Until Deb Edmunds filled in the job.

22 Q. I'm trying to figure out how long a period
23 of time that was.

24 A. It could have been a couple of months. I

1 Amaryl and Lantus.

2 Q. When Deb Edmunds came and she became
3 your -- was it area manager when she arrived in '99?

4 A. It was district manager. They changed it
5 later. It was the same, though.

6 Q. Your pod members did not report to
7 Ms. Edmunds, did they?

8 A. No.

9 Q. They reported to different area managers?

10 A. Yes.

11 Q. Did you have a territory?

12 A. Yes.

13 Q. What territory was it?

14 A. South Shore.

15 Q. That's what it was called?

16 A. Yes. It was actually called "South
17 Boston."

18 Q. What did it consist of?

19 A. Starting from Norwell, Whitman, Abington,
20 down to the Cape, over to Dartmouth.

21 Q. Did it also include New Bedford?

22 A. Yes, same area.

23 Q. Did it include Fall River?

24 A. No.

1 Q. Your pod mates were calling on the same
2 physicians that you were generally?

3 A. No.

4 Q. Who were they calling on?

5 A. I can't tell you each physician they were
6 calling on. With diabetes, I called on
7 endocrinologists. They wouldn't call on
8 endocrinologists. I called on some cardiovascular
9 people, which I don't believe they did either.

10 Q. What was the concept of the pod, Mr. Byrd?

11 A. More voice, more volume, more business.
12 The more people you have talking about a product,
13 the more business you should get.

14 Q. Did you have monthly meetings with your pod
15 mates?

16 A. Yes.

17 Q. The purpose of the meetings was to talk
18 about what?

19 A. To talk about strategy.

20 Q. Strategy for selling?

21 A. Yes, territories, situations.

22 Q. You worked for Aventis from May of 1997
23 until your termination in 2002?

24 A. Yes.

1 Q. Are you aware of any other employees at
2 Aventis who were terminated while you were there?

3 A. Terminated, no; quit, yes. I take that
4 back. There was a gentleman, but I can't think of
5 the name. I believe he was from Connecticut. I
6 don't know.

7 Q. Do you have a recollection that he was
8 terminated?

9 A. No. I just knew that he was.

10 Q. That's what I'm asking you. You understood
11 that somebody got terminated?

12 A. Yes.

13 Q. Do you know why he got terminated?

14 A. No.

15 Q. Do you know his name?

16 A. No.

17 Q. Do you know his race?

18 A. White.

19 Q. He was a sales rep?

20 A. Yes.

21 Q. You heard that he was terminated, but you
22 don't know why?

23 A. Right.

24 Q. When you went out into your territory on a

1 daily basis, it was your responsibility to call on
2 various medical practices to talk to the doctors and
3 their staff about the drugs that you were selling?

4 A. Yes.

5 Q. You had a device to record those calls?

6 A. Uh-huh.

7 Q. Does that device have a name?

8 A. I believe it was Velo.

9 Q. Sorry?

10 A. Velo. There were two different types.

11 Q. How are you spelling that?

12 A. I believe it was spelled V-e-l-o. I'm not
13 sure.

14 Q. The device enabled you to put in
15 information about the call you had just made?

16 A. Yes.

17 Q. And you know as an electronic device, it
18 recorded the time that you entered the call?

19 A. I would assume so.

20 Q. Well, you knew that, didn't you?

21 A. No. I knew there was a signature stamp,
22 but I didn't know it recorded the time of my putting
23 in the information.

24 Q. You knew you were supposed to record the

1 Q. Did you solve the problem so that you
2 wouldn't have to use this much paper?

3 A. I think so, yes. I don't remember.

4 (Document marked as Byrd

5 Exhibit 6 for identification)

6 Q. Exhibit 6 is a photocopy of a midyear
7 assessment. It's dated September 18, 2000. This is
8 the review that Ms. Edmunds gave you at the Dedham
9 Hilton?

10 A. (Witness reviews document) I believe so.

11 (Document marked as Byrd

12 Exhibit 7 for identification)

13 Q. Exhibit 7 is a photocopy of the 45-day
14 performance improvement plan that was accompanying
15 this review. Is this Exhibit 7 the plan that she
16 showed you at the Dedham Hilton that you said you
17 were not going to sign?

18 A. Yes.

19 Q. I take it at the Dedham Hilton, you met
20 with her in the lobby of the hotel?

21 A. Yes.

22 Q. Did she give you a chance to read the
23 midyear performance plan assessment that she had
24 completed?

1 A. Yes.

2 Q. The way this works is that you actually
3 prepare the Associate Assessment section first?

4 A. I don't know if I prepared it first, but I
5 prepared part of this, yes.

6 Q. The part that says, "Associate Assessment"
7 is the part that you did?

8 A. Yes.

9 Q. You make that assessment of yourself, and
10 then you give it to your manager?

11 A. Yes.

12 Q. And she incorporates it into the review?

13 A. Yes.

14 Q. On the first page at the bottom, she says
15 that she was on a field visit with you and you
16 referred to a clinical trial or report as Allegra
17 versus Loratadine when it was really Allegra versus
18 Sertazine. Did that happen?

19 A. She said it happened, yes.

20 Q. You have no recollection of it?

21 A. No. That's why I asked her, "Did I say
22 that?" She took offense to it.

23 Q. At the time when she corrected you, you
24 didn't realize what you had done; is that it?

1 A. I didn't think I said it the way she said
2 it.

3 Q. How about on the next page, she said that
4 you said a physician could use Amaryl in connection
5 with insulin or Amaryl instead of saying in
6 conjunction with insulin or Metphormin. Do you
7 recall doing that?

8 A. Yes.

9 Q. You made a misstatement?

10 A. Uh-huh.

11 Q. You have to say yes, if that's true.

12 A. Yes.

13 Q. On Page 177, at the bottom she said she
14 didn't feel you are being persistent in targeting
15 the key physicians.

16 It is the case, isn't it, that you were
17 provided with information about the physicians who
18 you were better off targeting than others?

19 A. Yes.

20 Q. But you did sometimes have your own opinion
21 on that, didn't you?

22 A. Yes.

23 Q. On occasion, you would call on doctors that
24 you felt were more appropriate targets rather than

1 wanted to transfer?

2 A. Right.

3 Q. Other than Bill and Jim, you didn't talk to
4 anybody else about Deb Edmunds?

5 A. No. I didn't discuss Deb Edmunds in detail
6 either. It was just that I was having a problem.

7 Q. Then did you say you had some meeting with
8 your pod mates where they said they thought you were
9 fired?

10 A. It was our quad meeting. As I arrived,
11 they said they thought I was fired.

12 Q. You don't know where they heard that from,
13 do you?

14 A. No, I don't know where they heard the rumor
15 from.

16 (Document marked as Byrd

17 Exhibit 8 for identification)

18 Q. Exhibit 8 is a photocopy of the warning
19 dated 11/14/00. I take it you have seen this
20 before?

21 A. (Witness reviews document) Yes.

22 Q. How did you get this?

23 A. I believe at a meeting with Deb Edmunds and
24 Chris List. I don't remember exactly.

1 A. No.

2 Q. What warning was he present for?

3 A. Whatever warning they gave me at that time,
4 whatever Deb wanted to give me, if she gave me
5 anything. I don't have any memory that she gave me
6 anything.

7 Q. Do you have any specific recollection of
8 the meeting with Mr. Kaisel present?

9 A. Yes.

10 Q. What happened?

11 A. He said he was there to observe. Basically
12 that was it.

13 Q. Do you remember what Ms. Edmunds said to
14 you at the meeting?

15 A. No, I don't. It might have been a review
16 or a warning. I don't remember.

17 (Document marked as Byrd

18 Exhibit 9 for identification)

19 Q. Exhibit 9 is a photocopy of something
20 called "Performance Status Discussions." It's dated
21 September 5, 2001. Have you seen this document
22 before?

23 A. (Examines document) Yes.

24 Q. Are those your initials on the front page?

1 A. Yes.

2 Q. Where was the fishing trip?

3 A. Plymouth, Mass, or Marshfield, Mass.

4 Q. Well, was it Plymouth or Marshfield?

5 A. The boat was located in Marshfield.

6 Q. Who did you take on the fishing trip?

7 A. Doctors and Julie Nelson.

8 Q. Who were the doctors?

9 A. The one I recall is Johnson, who owned the
10 boat, and Coughlin. Coughlin gave the talk.

11 Q. Dr. Johnson owned the boat?

12 A. Yes.

13 Q. You used his boat?

14 A. Right.

15 Q. Dr. Coughlin gave a talk of some sort?

16 A. Yes.

17 Q. I guess there was a fishing trip for five
18 physicians, so there were three other doctors other
19 than --

20 A. No. Due to inclement weather, they didn't
21 show up.

22 Q. So it was just two people on the boat?

23 A. Two physicians.

24 Q. Two physicians, Julie Nelson and you?

1 A. And one other person.

2 Q. Who was that?

3 A. I think it was Julie's boyfriend.

4 Q. You spent \$1,000 on this?

5 A. That's what the charter was, yes.

6 Q. Well, it was the doctor's boat, wasn't it?

7 A. Yes.

8 Q. You paid him \$1,000 to use his boat?

9 A. He has a charter business.

10 Q. You recognized that that exceeded the
11 expense guidelines?

12 A. I got permission, again, from Deb Edmunds
13 to do this.

14 Q. When did you get permission?

15 A. Whenever I asked her. I couldn't tell you
16 the date or the time.

17 Q. She charges you with wrongdoing for
18 exceeding the expense guidelines.

19 A. And she's done that before.

20 Q. You are saying she's lying?

21 A. I'm saying she gave me permission.

22 Q. You don't have anything in writing, I
23 assume?

24 A. No.

1 Dictaphone is in business, because we served them
2 the subpoena and we got records.

3 A. Okay.

4 Q. Is that a surprise to you?

5 A. Yes, it is.

6 Q. The front page of this form has the name
7 "Bill Byrd" and the Social Security No. 109-40-9915.
8 Is that your Social Security number?

9 A. Yes, it is.

10 Q. This front page of the form indicates a
11 hire date of January 17, 1994. Does that sound
12 right to you?

13 A. Yes.

14 Q. It says that the last day worked is May 3,
15 1996. Does that sound right to you?

16 A. Yes.

17 Q. On the form, there's an X for termination.
18 There's not an X for layoff. Does this alter your
19 testimony earlier today about the reason for your
20 termination?

21 A. What termination?

22 Q. The reason for your leaving Dictaphone.

23 A. No.

24 Q. You told us that Dictaphone was going out

1 of business?

2 A. That's what I was told by Barry Jones.

3 Q. This says, "Termination was preapproved by
4 human resources, including Sean Colt Hunt and Tony
5 Procops," do you see that on the front page?

6 A. (Examines document) Yes.

7 Q. Do you know those people?

8 A. No.

9 Q. This says on the front page the title of
10 the position was Healthcare Specialist. Does that
11 sound right to you?

12 A. Yes.

13 Q. It says you reported to a Bob Nardi, Health
14 Care District Manager. Is that right?

15 A. Yes.

16 Q. So you know Mr. Nardi?

17 A. Yes, I did.

18 Q. It's still your position that you didn't
19 have any performance issues there?

20 A. None that were written up.

21 Q. Were there any that you were told about?

22 A. No. Sales were down. Mr. Nardi came on
23 board for a month or six weeks before I left.

24 Q. Did you have reason not to like him?

1 before a program in order to receive approval when
2 the program is outside the expense guidelines, do
3 you see that?

4 A. Uh-huh.

5 Q. Is that what you are talking about when you
6 said previously that Deb treated you differently
7 because she asked you to get approval before the
8 program?

9 A. Yes.

10 (Document marked as Byrd

11 Exhibit 14 for identification)

12 Q. Exhibit 14 is a photocopy of a resume that
13 your counsel provided to us. Is this a resume that
14 you are currently using?

15 A. I believe so.

16 Q. It says, "Employment History" down at the
17 bottom, "Byrd Enterprises, May 2002 to the present."
18 What is that?

19 A. This is what we discussed earlier on the
20 W-2 Form.

21 Q. Was that the nutrition supplement --

22 A. Yes.

23 Q. It says, "Nutrition and weight consultant,
24 Byrd Enterprises, April 2002."

1 A. It's a typo.

2 Q. It's the same thing?

3 A. Yes.

4 Q. Where it says, "Selected Awards,
5 Achievements, Aventis," these are all awards that
6 you received in your capacity as a sales rep?

7 A. I believe so, yes.

8 Q. You would not put these here if you didn't
9 get them, would you?

10 A. No, I would not.

11 Q. Down at the bottom where it says,
12 "Education, B.S., business administration New Mexico
13 State University," that is not true, is it?

14 A. No, it is not true.

15 Q. You are using a resume which has a degree
16 which you don't have?

17 A. True.

18 Q. You don't think that's inappropriate?

19 A. Oh, yes, I do.

20 Q. But you are doing it anyway?

21 A. Yes.

22 Q. Because you want to get a job, so you put
23 down that you have a B.S.?

24 A. True.

1 Q. Belinda Lawrence?

2 A. I don't know.

3 Q. Do you have a computer at home?

4 A. Yes.

5 Q. Do you send E-mails to people?

6 A. Yes.

7 Q. Have you had any E-mail communications with
8 Yvette Daniels, Donna Glave, or any of these other
9 people we mentioned?

10 A. No. The only thing I got by E-mail was
11 this letter (indicating).

12 (Document marked as Byrd
13 Exhibit 16 for identification)

14 Q. Exhibit 16 is photocopy of your 1999 tax
15 return which your counsel provided to us.
16 Mr. Clement, again, was the accountant.

17 This does not bear your signature, but I
18 assume that the original probably did; is that
19 correct?

20 A. I would assume so.

21 Q. Look at the page with Schedule C, Profit or
22 Loss from Business, which is about the fifth or
23 sixth page in, do you see that?

24 A. (Examines document) Yes.

1 Q. It says the name of the proprietor is
2 William M. Byrd. What business was this for?

3 A. It looks like my Herbalife.

4 Q. Were you running your Herbalife business in
5 1999?

6 A. I don't remember. And I never ran it as a
7 business either, as I explained to you. It never
8 happened.

9 Q. It's your tax return, Mr. Byrd. I'm trying
10 to figure out what it is.

11 A. What would you like to know?

12 Q. For starters, there's an entry for supplies
13 listed, \$2,500. What supplies?

14 A. I don't remember.

15 Q. There's a deduction of \$1,469 for car and
16 truck expenses. What are those?

17 A. That could be a leasing expense on my
18 wife's car. I'm not sure. I don't know.

19 Q. Your wife uses her car to drive to school?

20 A. Uh-huh.

21 Q. Is that yes?

22 A. Yes. I'm sorry.

23 Q. What business would your wife be using the
24 car for?

1 A. She wouldn't. I would use it.

2 Q. It's your testimony I guess that you really
3 don't know what this profit and loss from business
4 form is?

5 A. I don't remember, no.

6 Q. Were you operating any business in 1989
7 other than Aventis?

8 A. I didn't operate the Aventis business. I
9 believe I had this Byrd Enterprises.

10 Q. The Herbalife business?

11 A. Yes, but I'm not sure.

12 Q. While you were working as a sales rep for
13 Aventis in 1999, you also had your own business
14 selling Herbalife products?

15 A. As I said mentioned, it was not a business.

16 Q. What was it?

17 A. I never sold any Herbalife.

18 Q. It's on your return in 1999. It's on your
19 return in 2003.

20 A. That's right.

21 Q. Did you have a business or didn't you?

22 A. No.

23 (Document marked as Byrd
24 Exhibit 17 for identification)

1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, Ken A. DiFraia, Registered Professional
4 Reporter and Notary Public in and for the
5 Commonwealth of Massachusetts, do hereby certify
6 that there came before me on the 18th day of Oct.,
7 2004, at 10:05 a.m., the person hereinbefore named,
8 who was by me duly sworn to testify to the truth and
9 nothing but the truth of his knowledge touching and
10 concerning the matters in controversy in this cause;
11 that he was thereupon examined upon his oath, and
12 his examination reduced to typewriting under my
13 direction; and that the deposition is a true record
14 of the testimony given by the witness.

15 I further certify that I am neither attorney or
16 counsel for, nor related to or employed by, any
17 attorney or counsel employed by the parties hereto
18 or financially interested in the action.

19 In witness whereof, I have hereunto set my hand
20 and affixed my notarial seal this 2nd day of
21 November, 2004.

22 Ken A. Di Fraia

23 Notary Public

24 My commission expires 4/3/09

